In the High Court of Judicature at Madras

Dated: 06/02/2003

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The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice N.V.Balasubramanian

W.A.No.152 of 2003 and W.A.No.153 of 2003 and W.A.No.310 of 2003
and
Writ Petitions No.44393 and 44485 of 2002

W.A.No.152 of 2003

1. The Madras Medical Mission,
4-A, Dr. J.J. Nagar,
Mugappair, Chennai 50,
represented by its
Hon. Secretary K.V. George

2. Pondicherry Institute of Medical Sciences,
Kalapet, Pondicherry 14. ..... Appellants

-Vs-

1. Pondicherry University,
represented by it's Registrar,
R.V. Nagar, Pondicherry 14.

2. Dr.K.M.Cherian ..... Respondents

W.A. No.153 of 2003 & WP. No.44485 of 2002

The Madras Medical Mission,
4-A Dr. J.J. Nagar,
Mugappair, Chennai 50,
represented by its
Honourary Secretary K.V.George. Appellant/Petitioner

vs.

Pondicherry University,
represented by it's Registrar,
R.V. Nagar, Pondicherry 14. Respondent/Respondent

W.A.No.310 of 2003 & W.P. No.44393 of 2002

Dr. K.M.Cherian Appellant/Petitioner

vs.

1. Pondicherry University,
represented by it's Registrar,
R.V. Nagar, Pondicherry 14.

2. The Madras Medical Mission,
4-A, Dr. J.J. Nagar,
Mugappair, Chennai 50,
represented by its
Hon. Secretary K.V. George

3. Pondicherry Institute of Medical Sciences,
Kalapet, Pondicherry 14. Respondents/Respondents

Writ Appeals Appeals filed against the order of a learned single Judge dated 31.12.2002, in W.P.M.P.No.65072 of 2002 in W.P.No.44393 of 2 002, W.P.M.P.No.65179 of 2002 in W.P.No.44485 of 2002 and W.P.M.P.No.65072 of 2002 in W.P.No.44393 of 2002, respectively, and the writ petition No.44393 of 2002 is filed to direct the Pondicherry University to forbear from giving affiliation to the Pondicherry Institute of Medical Sciences for the academic year 2002-2003, and the writ petition No.44485 of 2002 is to direct the Pondicherry University to grant affiliation to the Pondicherry Institute of Medical Sciences.

!For the appellant in
W.A.No.152 of 2003 : Mr.Sriram Panchu,
Senior Counsel, for
Mr.V.Achuthan

^For Respondent 1 in
W.A.No.152 of 2003 : Mrs.G.Thilakavathi

For Respondent 2 in
W.A.No.152 of 2003 : Mr.Vijaya Narayan

For Pondicherry
Government : Mr.Murugesan,
Senior Counsel

For Medical Council
of India : Mr.Sasidharan,

Standing Counsel.

:JUDGMENT

(Judgment of the Court was delivered
by R.Jayasimha Babu, J.)

The Madras Medical Mission (appellant) established in 1982 at Chennai by the members of Orthodax Syrian Church, is a society registered under the Tamil Nadu Societies Registration Act, 1975. It has established an institute for Cardio Vascular diseases, an institute for Reproductive Medicines for Women's Health and a Transplant Center for organ transplantation. It has recently set up a 300 bed hospital and has established facilities for commencing a new medical college at Ganapathichettykulam, Kalapet, Pondicherry under the name and style of 'Pondicherry Institute of Medical Sciences' (PIMS). The estimated project cost is Rs.80.00 crores of which Rs.46.00 crores which includes borrowed funds of Rs.34.00 crores is said to have been already invested.

2. It applied to the Central Government in the year 2001 for permission to establish the new medical college commencing from the academic year 2002-03, such permission having been sought in terms of Section 10A read with Section 33 of the Indian Medical Council Act, 1956, (Act No.102 of 1956) and the Admission to Medical College Regulations, 1999 framed by the Medical Council of India under Section 33 of the said Act. The Government of Pondicherry had, on 07.12.2000 granted Essentiality Certificate for establishing this medical college with 1 00 seats. In that certificate it was noted that the doctor population ratio in Pondicherry is 1:950 while the doctor population ratio in India is 1:2083. The Pondicherry University also had, on 14.08.200 1 given it's consent in principle to affiliate the PIMS to the University subject to the grant of permission by the Government of India under Section 10A of the Indian Medical Council Act.

3. On 01.03.2002 the Ministry of Health and Family Welfare of Government of India informed the appellant that the appellant's proposal had been referred to the Medical Council of India for its evaluation and recommendation, and that after considering the scheme, and taking into consideration the recommendations of the Medical Council of India, the Ministry had come to the conclusion that a letter of intent for establishing the new medical college at Pondicherry by the appellant with an annual intake of 100 (one hundred) students with prospective effect, under Section 10(A) of the Indian Medical Council Act may be issued. That letter of intent also stated that the action to grant formal permission for starting the new college would be initiated on receipt of a compliance letter with regard to the three conditions set out in that letter.

4. Shortly thereafter, the appellant sought formal letter of permission from the Government, as by then it had established a hospital with 326 beds which had commenced functioning from October 2001, and a multi-storeyed building for the basic departments had been completed, was fully equipped, and was functional.

5. The Medical Council of India thereafter carried out an inspection on 19th June 2002. The few deficiencies pointed out by the Inspection Committee were, according to the appellant, complied with and the compliance report was submitted on 16th July, 2002. As letter of permission was not received even thereafter, the appellant as also several other similarly placed applicants who had proposed to start medical colleges approached the Supreme Court of India. On 30.10.200 2 the Honourable Supreme Court directed the Executive Committee of the Medical Council to decide the pending applications of various colleges and directed that an appropriate report be sent to the Court on or before 15th of November 2002.

6. Thereafter, on November 14, 2002, Ministry of Health and Family Welfare of Government of India conveyed to the appellant "approval of the Central Government to the establishment of a new medical college in the name and style of 'Pondicherry Institute of Medical Sciences' at Pondicherry ..... with an annual intake of 100 (one hundred only) students with prospective effect, i.e. from the academic session 2002-03 under Section 10(A) of IMC Act, 1956 as amended."

7. That letter of permission was limited to the admission of students initially for a period of one year and is to be renewed on yearly basis on verification of achievement of annual target set out in the project report. The College was not to admit more than one batch of students against that letter of permissio n, and application for renewal was required to be made to the Medical Council well before the commencement of the next academic session, for which admission are not to be made till the letter of permission is renewed.

8. The appellant informed the Pondicherry University on 21st of November, 2002 about the receipt of the letter of permission, copy of which was also sent to the University, and sought grant of affiliation so that the process of admission could be started for the academic year 2002-03. As the affiliation had not been granted till mid December 2002, the appellant filed writ petition seeking direction to the Pondicherry University to grant affiliation from the academic year 200 2-03. The former Chairman of the PIMS Dr. Cherian had earlier filed a writ petition seeking a direction to forbear the University from granting affiliation for the academic year 2002-03.

9. On the interim applications filed by the two petitioners, the learned single Judge made the impugned order on 31st of December 2002 directing the University to consider the applications of the appellant for provisional affiliation for the academic year 2002-03 and pass appropriate orders within six weeks. Petitioners in the two writ petitions have preferred the present appeals against that interim order. As the relief claimed in the writ petition and the prayer made in the interim applications are identical, it was agreed by counsel, that this order be treated as the final order in those writ petitions as well. The writ petitions shall stand disposed off in terms of this order.

10. After the institution of these appeals, the Inspection Committee

appointed by the Academic Council of Pondicherry University which comprised of the former Vice Chancellor, and the present Vice Chancellor of the Tamil Nadu Dr. M.G.R. Medical University, the Director of Clinical Epidemiology of Sri Ramachandra Medical College and Research Institute, and the Director in-charge of the College Development Council of Pondicherry University, inspected PIMS and submitted a report dated 20.01.2003 to the Academic Council.

11. The Academic Council at it's meeting held on 29.01.2003 accorded provisional affiliation to the PIMS for the first year MBBS Course for the academic year 2002-03, subject inter alia, to the condition that, "the intake of students shall be 100 (one hundred only) for the academic year 2002-2003" and on condition that, "the Medical Council of India attendance requirement of 240 teaching days shall be complied with before the students take up their I Year MBBS examinations." The Admision Criteria is to be in accordance with the Medical Council of India Regulations and the selection of the students is to be based on merit through a transparent entrance examination. The provisional affiliation so granted is only for the academic year 2002-03, the extension of affiliation being dependent upon the appellant obtaining renewal of the letter of permission from the Ministry of Health, Government of India.

12. We have heard Mr.Sriram Panchu, learned Senior Counsel for the appellant Madras Medical Mission, Mr.Vijaya Narayan, for the appellant in Writ Appeal No.310 of 2003, Mrs. G.Thilakavathi for the Pondicherry University, Mr.Murugesan, Senior Counsel for the Pondicherry Government, and Mr.Sasidharan for the Medical Council of India. Mr. Murugesan, learned Senior Counsel who took notice for the Union Territory of Pondicherry as directed by us, placed before us information regarding private medical colleges in that Union Territory. He also placed before us the Regulations framed by the Pondicherry Government in G.O. Ms. No.123 dated 31.12.2002 regarding Admission Procedure and Fee Structure to the Unaided Professional Colleges in the Union Territory of Pondicherry. Mr. Sasidharan, learned Standing Counsel, who took notice for Medical Council of India as directed by us, has informed us, after obtaining instructions from the Medical Council of India (MCI) that it had granted permission to PIMS in November 2002 to admit students for the academic year 2002-03 and that the final decision with regard to such admission for that academic year was to be made by the Pondicherry University. He has placed before us the Medical Council of India Regulations on Graduate Medical Education, 1997, framed by the Medical Council of India in exercise of powers conferred on it by Section 33 of the Indian Medical Council Act, 1956. He has further informed us that pursuant to the directions issued by the apex Court in the case of Medical Council of India vs. Madhu Singh, (2002) 7 SCC 258, inter alia, that "MCI shall ensure that examining bodies fix a time schedule specifying the duration of the course, the date of commencement of the course, and the last date for admission," the MIC has conveyed it's views to the Government of India, but that no new Regulations or Rules with regard to those matters have been framed by the MCI or by the Government of India.

13. The appellant has filed statements before us wherein, inter alia, it is stated that permission has been granted for admitting students for the first year MBBS Course for the academic year 2002-03, not only to the

appellant college, but also to several other similarly placed newly established medical colleges in Kerala and Andhra Pradesh - namely, Somerville Medical College, Trivandrum, Pushpagiri College and Kolenherry Medical College, both affiliated to Rajiv Gandhi University, Kerala and Katoori Medical College, Andhra Pradesh - such permissions having been granted on or after 14th of November 2002. In the Union Territory of Pondicherry itself, as can be seen from the letter of 4th February, 2003 of the Under Secretary addressed to it's counsel, which letter has been placed before us, the students for the first year course for the academic year 2002-03 are yet to be admitted in all four medical colleges, and students who passed the joint entrance test conducted by the Centralised Admission Committee are awaiting admission to those colleges. It was submitted by the learned counsel for Pondicherry Government that admissions are made only after the Government of India grants letter of permission to the concerned college or the letter of permission given to the college is renewed by the Government of India.

14. Though the Regulations framed by the University as also the Medical Council contemplate the commencement of the course on 1st of August of the academic year, in practice, so far as the newly established medical colleges are concerned, the commencement of the course for the first year students is several months subsequent to the first of August. The reason for this, as pointed out by the learned counsel for the appellant as also the counsel for the Pondicherry Government, is the delay in grant of initial letter of permission and subsequent renewal of permissions by the Government of India, which acts only after consulting the Medical Council. That procedure of consultation and grant of approval spills over for a considerable number of months after the commencement of the academic year on 1st of August, the actual approval/renewal being granted several months after the commencement of the academic year.

15. This, however, does not cause any practical problems as the examination for the first year students in the medical course is to be held at the end of the second semester. The Medical Council of India Regulations on Graduate Medical Education, 1997 in Regulation 7 deals with the training period and the time distribution for the course. Every student is required to undergo a period of certified study extending over four and a half academic years divided into nine semesters of six months each. That is followed by one compulsory rotating internship. Each semester is to consist of approximately 120 teaching days of eight hours each college working time, including one hour for lunch. The period of four and a half academic years is divided into three phases. Phase I covers two semesters; Phase II three semesters; and Phase III four semester. Examinations have to be held at the end of second, fifth, seventh and ninth semesters. The clinical and para clinical subjects, like Human anatomy, Physiology including Bio-Physics, Bio-chemistry and introduction to Community Medicine including Humanities are to be taught in the first two semesters.

16. This requirement can be met by the newly established medical colleges which commence the teaching work for the first year even as late as in February of the year, as the Universities hold the examination in December. Regulation 12(3) of the 1997 Regulations which deals with University

Examinations provides, inter alia, that there shall be one main examination in a year and a supplementary to be held not later than six months after the publication of the results of the main examination. After the college completes the first four and a half years of teaching and it's first graduates come out, the college would become entitled to permanent affiliation to University and would no longer have to secure annual renewal of the letter of permission from the Government of India. The delay involved in securing those permissions which results in the delay in admission would cease after the first four and a half academic years, and the colleges would be in a position to comply with the normal requirements of the University calendar and the Regulations of the Medical Council which contemplate the commencement of the academic year and teaching of work on the first of August.

17. The appellants have placed before the Court a draft teaching calendar for this academic year which shows that even after providing for the weekly holidays and certain major festival holidays, there would still be 244 teaching days available between 10th February till 1 st December of this year.

18. The objections raised by the former Chairman of PIMS for the grant of affiliation by the University for the academic year 2002-03 are not tenable. He also has no locus standi to seek a direction to the University not to grant affiliation. His writ petition as also the writ appeal filed against the interim order in that petition are liable to be and are dismissed.

19. The admission to the college should be made without any loss of time as the teaching work should commence next week. The college has already held the entrance test. It has a ready list of 100 candidates who have passed the entrance test held by it. It has been submitted that the list has been arranged according to merit, the examination having been held after due advertisement and giving opportunity to all those qualified to apply and to sit for the examination. Though the appellant had initially proposed to admit the first eighty students in that list and indicated it's readiness to admit only twenty students from Pondicherry who have passed the Centralised Admission Test for the academic year 2002-03, during the hearing a further affidavit dated 5th February sworn to by the Secretary of the appellant was filed wherein it is stated that as an ad hoc arrangement for the academic year 2002-03, fifty seats would be filled up by the management, twenty by the Pondicherry Government, and of the balance thirty, fifteen each by the management and the Pondicherry Government. It is also stated in that affidavit that the fee for the Government sponsored students will be as fixed by the Government, and that such students will not be required to pay the caution deposit.

20. Counsel for the Government of Pondicherry has, however, relied upon the Regulations regarding the Admission Procedure framed by the Union Territory on 31.12.2002 and submitted that 50% of the seats must be filled from among those who have passed the Centralised Admission Test. He has relied upon Regulations 14, 17 and 19. Regulation 14 provides that, "Based on

the local needs and taking the U.T. of Pondicherry as a unit for determining local needs, 50% of the seats in every college shall be earmarked to be filled up by the College itself and the remaining 50% based on the Counselling by the CENTAC." CENTAC is the Centralised Admission Committee constituted by the Government for conducting the common entrance examination. Regulation 17 provides that, "50% of the seats earmarked to be filled up by the CENTAC is subject to reservation as may be fixed by the Government." Regulation 19 provides that the prospectus for the CENTAC 2002-2003 will be deemed to have been modified in accordance with these regulations prospectively.

21. Learned Counsel for the appellant submitted that the validity of these Regulations are under challenge in Writ Petition No.2323 of 20 03 now pending before a learned single Judge of this Court who has on 27th January 2003 granted an ex parte order of stay of the enforcement of these Regulations. He submitted that these Regulations are not to be taken note of, for the purpose of admissions now to be made.

22. The preamble to these Regulations refers to the judgment of the Honourable Supreme Court dated 31.10.2002 in Writ Petition (Civil) No.317/93 and states that the Regulations framed are in accordance with the observations made in that judgment. The judgment referred to in that preamble is the judgment rendered by the eleven Judge Bench of the apex Court in the case of T.M.A. Pai vs. State of Karnatka, (20 02) 8 SCC 481. Paragraphs 67 to 70 of the judgment of the learned Chief Justice, who spoke for the majority, are captioned as "Private Unaided Professional Colleges". Paragraphs 67 to 69 which deal with admissions and the fee are relevant. They read as under:

" 67. We now come to the regulations that Can be framed relating to private unaided professional institutions.
68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the princip le of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and postgraduation non-professional colleges or institutes.

69. In such professional unaided institutions, the management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/university subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and that there is no profiteering, through a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teaches."

Paragraph 68 of that judgment specifically provides that the percentage for the seats to be reserved for the management and the percentage of seats to be filled on the basis of counselling by the State Agency is to be prescribed by the Government. The appellant, therefore, cannot assert a right to prescribe the percentage of seats to be filled by the Government on the basis of counselling. The fact that the Regulations have been challenged and the fact that there is an ex parte order of stay of the enforcement of those Regulations would not result in the appellant acquiring a power which belongs to the Government. As to whether the 50% prescribed in the Regulations is the appropriate percentage or not will have to be adjudicated in the other proceedings instituted by the appellant.

23. As the admission of the first batch of students to the PIMS cannot await adjudication regarding correctness or otherwise of the prescription of 50% on the basis of counselling by the State Agency, an adhoc percentage will have to be fixed for this academic year 2002-03 .

24. The prescription of the percentage has to be on the basis of the local needs. The Regulation notified by the State Government does not spell out the local needs requiring fixation of such percentage. As already noticed, the doctor population ratio in this Union Territory was 1:950 at the time the Essentiality Certificate was issued in year 2000. The population of the Union Territory, we have been informed by the learned senior counsel for Pondicherry, is about 11 lakhs.

25. There are four private medical colleges in the Union Territory each of which has 100 seats. The other medical college in the Union Territory JIPMER is under the control of the Central Government. The doctor population ratio in the State of Pondicherry is about half of the ratio for the country as a whole. While that by itself would not disentitle the Government from improving the doctor population ratio by encouraging those domiciled in it to acquire medical degrees in the hope that they will, thereafter, practice medicine only in that Union Territory, prescription of a percentage as high as 50 for those from the Union Territory of Pondicherry, thereby limiting the seats available to those in the rest of the country to only 50% does not appear to be prima facie just and equitable.

26. Medical colleges which require very substantial investment are to be regarded as being in the nature of a national resource meant to be utilised for the benefit of the country as a whole. The location of the colleges is not evenly distributed among the States. Prima facie, the location of as many as four medical colleges in a Union Territory which has a population of only 11 lakhs should not result in the residents of that State having as many as 50% of the seats in those newly established institutions which are established not with the aid, total or partial of the funds provided by the Government, but are established wholly with funds privately owned or borrowed. The investment made in these colleges is meant to benefit not only the residents of Pondicherry, but the southern region, and ultimately of the country as a whole.

27. Barring the small number of five seats to be filled by Non Resident Indians all the other seats in this college are to be filled by the Indian Nationals. Excessive reservation for those domiciled in the Union Territory, besides being restrictive of the management's right to admit students, would result in the denial of equal opportunity to the students from the other parts of the country who may be more meritorious. The residents of the other parts of the country are unable to take Centralised Admission Test as it is meant primarily for the benefit of those domiciled in the Union Territory. We are of the prima facie view that the Government quota be limited to roughly one third instead of one half for admission to this private unaided medical college for this year.

28. Having regard to all these factors we consider it just to permit the appellant to fill 65 seats out of 100 seats from the list of those who have passed the entrance test conducted by the appellant, and fill the remaining 35 seats on the basis of the counselling by the Pondicherry Government, namely from among those who have passed the Centralised Admission Test, in accordance with their merit ranking and subject to the reservations provided in accordance with law by the Pondicherry Government.

29. The percentage that we have now fixed being purely ad hoc in nature for the current academic year, we make it clear that in the event of a different percentage being fixed by the Court or the Government, or in the event of 50% fixed in the Regulations already framed by the Government being sustained by the Court, the difference in the percentage so fixed and the percentage now fixed by us may be adjusted while allocating the seats as between the State and the management for the next academic year.

30. In the prospectus issued by the appellant, it is provided that the students seeking admission under the management quota should make an interest free deposit of Rupees twenty lakhs which shall be repayable at the end of 10 years and which will be liable for forfeiture, in the event of breach of any of the terms of the bond to be executed by the students undertaking to serve in any of the institutions run by the appellant for a period of two years from the date of graduation. During the course of hearing, the Secretary of the appellant filed an affidavit dated 21st January 2003 stating that the prospectus will be corrected to the effect that the deposit will not be liable to forfeiture even if there is discontinuance of

work during the bond period or there is inability to complete the service under the bond. According to the appellant, insistence on such compulsory deposit being made, does not amount to collection of capitation fee, as in the definition of 'capitation fee' in the State enactments of Tamil Nadu and Karnataka prohibiting the collection of capitation fees, 'deposit' is excluded.

31. It was further submitted for the appellant that if such interest free deposit repayable after ten years is not collected, the Institution will have to charge Rs.4.8 lakhs as the annual fee for each student as that is the cost per student. The amount already invested, it was submitted, was Rs.47.5 crores and that a further investment of Rs.26.00 crores is required to be made over the next two years. The appellant had already invested Rs.12.5 crores from it's funds, and had borrowed a sum of Rs.35.00 crores, which amount has to be repaid with interest.

32. The Regulations framed by the Pondicherry Government regarding Admission Procedure and Fee Structure to the Unaided Professional Colleges in the Union Territory of Pondicherry by Regulation 5 requires the college to propose a fee structure which shall be free from profiteering and does not involve payment of a capitation fee. The proposal so submitted is to be examined by a Committee chaired by the Chief Secretary and comprising the Secretaries - Finance, Education, Law, Health, - to the Government, a Chartered Accountant to be nominated by the Chairman, and the convener of CENTAC. The Committee is not to modify the proposal except after hearing the college. By Regulation 10, the college is not to charge any fee more than what is approved by the Committee.

33. The judgment of the apex Court in the case of T.M.A. Pai mandates that, "A rational fee structure be adopted by the management which would not be entitled to charge a capitation fee."

34. The Regulations framed by the Pondicherry Government does not define 'capitation fee', though it prohibits collection of the same. The judgment of the apex Court, which permits the State or University to devise appropriate machinery to ensure that no capitation fee is charged and there is no profiteering even though a reasonable surplus for the furtherance of education is permissible, does not set out or indicate approval of any particular statutory or non-statutory definition of 'capitation fee'.

35. The meaning of the word 'capitation fee' given in the New Oxford Dictionary of English is,
"Noun : the payment of a fee or grant to a doctor, school or other person or body providing services to a number of people, such that the amount paid is determined by the number of patients, pupils, or customers: the increased capitation enabled schools to offer pupils an enhanced curriculam.
- Origin early 17th century (denoting the counting of heads) : from late Latin capitatio 'poll tax', from caput 'head'."

36. Black's Law Dictionary states that poll tax is also termed ' per capita tax; capitation tax; capitation; head tax'.

37. The dictionary definition of "capitation fee" is very different from the definition of the term by the State legislatures in the enactments prohibiting capitation fee one of which was considered by a Bench of the apex Court in the case of Mohini Jain vs. State of Karnataka and others, (1992) 3 SCC 666. The view taken in that decision in the context of the definition of capitation fee in the Karnataka Act, was that any amount in excess of the fee charged in the Government college would amount to capitation fee. Such a view is evidently not a view that can be adopted now, having regard to the law laid down by the eleven Judge Bench in the case of T.M.A. Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481, that the fee charged could leave a reasonable surplus for the furtherance of education. Rarely, if ever is the full cost of service recovered by any department of the Government, and almost never, in the field of education. Moreover, the statutory definition of a word which is at variance with it's ordinary meaning found in a State enactment cannot be taken as a guide for deciding the meaning, of that word in Regulations framed by other States or Union Territories. By usage, 'capitation fee' in the field of education, has acquired a meaning which makes it akin to the 'premium' paid by a lessee to the lessor for the grant of a lease.

38. 'Capitation fee' in the field of education in our country has generally been understood to mean the capital sum compulsorily extracted from the students, or his or her parents or guardian by the educational institution or agency for the privilege of being admitted to that educational institution, that sum being in addition to the periodical fee payable for remaining in the institution till the completion of the course.

39. The question as to whether this deposit is a capitation fee which is prohibited by the judgment of the apex Court as also by the Regulations, is a matter which requires further consideration and is to be appropriately dealt with while considering the challenge already mounted by the petitioner to the Regulations, which Regulations, we are told, has been challenged by several other educational institutions as well. Taking note of this position, we considered it appropriate to permit the petitioner to collect this sum but keep the same in separate account in a fixed deposit, subject to the interim/final orders that may be made in the appellant's writ petition challenging the Regulations.

40. Counsel for the appellant pleaded before us that having regard to the magnitude of the investments already made by the Institution one quarter of the deposit, i.e., a sum of Rs.5.00 lakhs out of the Rs.20.00 lakhs to be collected as deposit from each management quota candidate may be allowed to be utilised by the Institution as it has to meet the cost of not only maintaining the institution but also servicing the debt incurred by it and the cost of the further facilities which it is required to provide. We grant such permission to utilise one fourth of the total amount collected as deposit subject to the appellant first providing an unconditional bank guarantee for that one fourth in favour of the Registrar of this Court. The guarantee shall remain in force till the disposal of the writ petition No.No.2323 of 2003 on merits and for a

period of six months thereafter. The format of the guarantee shall be submitted for the approval of the Registrar within ten days. No part of the deposit may be utilised by the appellant until the Bank guarantee is executed and lodged with the Registrar. The balance seventy five percent will remain in short term fixed deposit in a nationalised bank, will not be utilised by the appellant in any manner and shall not be made or be subject to any charge in favour of any one, or be given as security for any purpose. It will be held in trust for the students who have paid the deposits and shall be subject to such orders as the Court may make in the writ petition filed by the appellant challenging the Regulations. In the event of that writ petition being dismissed for any reason, the amount of the guarantee shall be forthwith paid to the Registrar, who shall immediately after receiving the monies ensure disbursal of the same to the students who had paid those amounts. The list of students, shall, for this purpose, be furnished to the Registrar by the appellant. The seventy five percent kept in short term deposits shall also be refunded immediately in the event of dismissal of that writ petition.

41. The appellant has undertaken to charge only the fee prescribed by the Government for the 35 students to be admitted through CENTAC and has undertaken to waive or reduce the fee for those found deserving of such concession from among those admitted through the CENTAC. For the others it proposes to levy a fee of Rs.1.75 lakh per annum. Under the Regulations the proposed fee structure is to be approved by the Committee of Secretaries - an exercise which is yet to be done. Having regard to the magnitude of investments made, bulk of which is borrowed funds, appellant may collect the fee as proposed by it, subject however to the condition that in the event of the fee ultimately fixed under the Regulations or by the Court being less, the excess collected will be refunded to the students.

42. The learned Senior Counsel for Pondicherry Government has assured us that there will be no difficulty whatever in filling within the next four to six days, the 35 seats through CENTAC, as a list of 200 students who have passed that examination is readily available and all those in that list are ready and willing to join the college.

43. The writ appeals and the writ petitions filed by the Madras Medical Mission are disposed off accordingly. The writ appeal No.310 of 2003 and the writ petition No.44393 of 2002 are dismissed.

(R.J.B.,J.) (N.V.B.,J.)
06.02.2003

Index : Yes
Internet: Yes

Dev/